

## JOURNAL OF THE HOUSE.

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Thursday, October 27, 2005.

Met according to adjournment, at eleven o'clock A.M., with Mr. Donato of Medford in the Chair (having been appointed by the Speaker, under authority conferred by Rule 5, to perform the duties of the Chair).

Prayer was offered by the Reverend Robert F. Quinn, C.S.P., Chaplain of the House, as follows:

Gracious God, in whom we place our trust and confidence, we take a moment to offer a prayer of thanks and to ask for Your help as we struggle to keep our personal and legislative priorities and goals clear and relevant. Each day, we are called upon to make choices and to select options on a variety of issues. Often, proposed legislative items are straight-forward, but, at times, complex with unforeseen and unintended consequences. As elected officials, inspire us to make reasoned and thoughtful decisions which serve the best interests of the people and our communities in this changing world. Guide us as we address current legislative and cultural issues and plan for the future well-being of our children and families.

Prayer.

Grant Your blessings to the Speaker, the members and employees of this House and their families. Amen.

At the request of the Chair (Mr. Donato), the members, guests and employees joined with him in reciting the pledge of allegiance to the flag.

Pledge of  
allegiance.

### *Silent Prayer.*

At the request of Representative Nyman of Hanover, the members, guests and employees stood in a moment of silent prayer in memory of Janet W. O'Brien, a member of the House of Representatives from Hanover from 1991 to 1998, inclusive.

Silent  
Prayer.

### *Statement Concerning Representative Canavan of Brockton.*

A statement of Mr. Rushing of Boston concerning Mrs. Canavan of Brockton was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Canavan of Brockton, will not be present in the House Chamber for today's sitting due to previously scheduled trip. Any roll calls that she may miss today will be due entirely to the reason stated.

Statement  
concerning  
Representative  
Canavan of  
Brockton.

### *Statement Concerning Representative Kennedy of Brockton.*

A statement of Mr. Rushing of Boston concerning Mr. Kennedy of Brockton was spread upon the records of the House, as follows:

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Kennedy of Brockton, will not be present in the House Chamber for today's sitting due to his continued hospitalization. Any roll calls that he may miss today will be due entirely to the reason stated.

Statement  
concerning  
Representative  
Kennedy of  
Brockton.

*Statement Concerning Representative Nangle of Lowell.*

A statement of Mr. Rushing of Boston concerning Mr. Nangle of Lowell was spread upon the records of the House, as follows:

Statement  
concerning  
Representative  
Nangle of Lowell.

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Nangle of Lowell, will not be present in the House Chamber for today's sitting due to previously scheduled family commitment. Any roll calls that he may miss today will be due entirely to the reason stated.

*Statement Concerning Representative Owens-Hicks of Boston.*

A statement of Mr. Rushing of Boston concerning Mrs. Owens-Hicks of Boston was spread upon the records of the House, as follows:

Statement  
concerning  
Representative  
Owens-Hicks of  
Boston.

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Owens-Hicks of Boston, will not be present in the House Chamber for today's sitting due to illness. Any roll calls that she may miss today will be due entirely to the reason stated.

*Statement of Representative Rogeness of Longmeadow.*

A statement of Ms. Rogeness of Longmeadow was spread upon the records of the House, as follows:

Statement of  
Representative  
Rogeness of  
Longmeadow.

MR. SPEAKER: I would like to call to the attention of the House the fact I was unable to be present in the House Chamber for a portion of today's sitting and a portion of the sitting of Wednesday, October 19th due to an illness and subsequent death in my family. Any roll calls that I may have missed during said sittings was due entirely to the reason stated.

*Statement Concerning Representative Rogers of Norwood.*

A statement of Mr. Rushing of Boston concerning Mr. Rogers of Norwood was spread upon the records of the House, as follows:

Statement  
concerning  
Representative  
Rogers of  
Norwood.

MR. SPEAKER: I would like to call to the attention of the House the fact that one of our colleagues, Representative Rogers of Norwood, was not present in the House Chamber for today's sitting due to a previous scheduled personal commitment. Had he been present for the taking of yea and nay numbers 243 to 248, inclusive, he would have voted, in each instance, in the affirmative. Any roll calls that he missed today was due entirely to the reason stated.

*Resolutions.*

The following resolutions (filed with the Clerk) were referred, under Rule 85, to the committee on Rules:

John V.  
Hogan.

Resolutions (filed by Messrs. Rogers of Norwood, Kafka of Stoughton, Coughlin of Dedham and Ross of Wrentham) congratulating Commander John V. Hogan on the occasion of his testimonial dinner;

Global Health  
Month.

Resolutions (filed by Mr. Koutoujian of Waltham) recognizing the month of November 2005, as the "Month of Global Health";

Bay State  
Banner.

Resolutions (filed by Mr. Rushing of Boston) honoring the Bay State Banner on its fortieth anniversary;

Ellen A.

Resolutions (filed by Representatives Torrisi of North Andover and L'Italien of Andover) congratulating Ellen A. Wood on the occasion of her one hundredth birthday;

Wood.

Resolutions (filed by Mr. Walsh of Boston) recognizing International Human Rights Day;

Human Rights  
Day.

Resolutions (filed by Ms. Wolf of Cambridge) congratulating the Cambridge Peace Commission on the occasion of its ninth annual Peace and Justice Awards; and

Cambridge  
Peace  
Commission.

Resolutions (filed by Ms. Wolf of Cambridge) congratulating the Ethical Society of Boston on the occasion of its fiftieth anniversary;

Ethical  
Society of  
Boston.

Mr. Scaccia of Boston, for the committee on Rules, reported, in each instance, that the resolutions ought to be adopted. Under suspension of the rules, in each instance, on motion of Mr. O'Flaherty of Chelsea, the resolutions (reported by the committee on Bills in the Third Reading to be correctly drawn) were considered forthwith; and they were adopted.

*Petitions.*

Petitions severally were presented and referred as follows:

By Ms. Polito of Shrewsbury, petition (accompanied by bill, House, No. 4456) of Karyn E. Polito and others (by vote of the town) that the town of Westborough be authorized to grant an additional license for the sale of alcoholic beverages not to be drunk on the premises. To the committee on Consumer Protection and Professional Licensure.

Westborough,  
liquor  
license.

By Mrs. Poirier of North Attleborough, petition (accompanied by bill, House, No. 4457) of Elizabeth A. Poirier and others (by vote of the town) relative to affordable housing in the town of Norton. To the committee on Housing.

Norton,  
affordable  
housing.

By Mr. Fallon of Malden, petition (accompanied by bill, House, No. 4458) of Christopher G. Fallon (with the approval of the mayor and city council) that the city of Malden be authorized to establish a department of public facilities; and

Malden,  
public  
facilities  
department.

By Mr. Perry of Sandwich, petition (accompanied by bill, House, No. 4459) of Jeffrey Davis Perry and others (by vote of the town) relative to the stabilization fund of the town of Bourne;

Bourne  
Water  
District.

Severally to the committee on Municipalities and Regional Government.

By Mr. Toomey of Cambridge, petition (accompanied by bill, House, No. 4460) of Timothy J. Toomey and others (with the approval of the city council) relative to certain members of the Cambridge retirement system. To the committee on Public Service.

Cambridge  
retirement.

By Mr. Kafka of Sharon, petition (accompanied by bill, House, No. 4461) of Louis L. Kafka and others (by vote of the town) for legislation to authorize the town of Sharon to establish a real property tax deferral program for certain elderly persons. To the committee on Revenue.

Sharon,  
tax  
deferrals.

By Ms. Spiliotis of Peabody, petition (accompanied by bill, House, No. 4462) of Joyce A. Spiliotis and others (with the approval of the mayor and city council) relative to the city of Peabody Municipal Light Plant. To the committee on Telecommunications, Utilities and Energy.

Peabody,  
municipal  
light plant.

Severally sent to the Senate for concurrence.

Elderly,  
property  
taxes.

Liquor  
stores,  
minimum  
wage.

Kelly  
Kearns  
Aveni,  
retirement  
credit.

Breast  
cancer  
detection,  
MRI s.

Product  
efficiency  
standards.

Eileen  
Crehan,  
disability  
retirement.

Motion  
picture  
industry.

Petitions severally were presented and referred as follows:

By Mr. Finegold of Andover, petition (subject to Joint Rule 12) of Barry R. Finegold relative to property tax relief for certain elderly persons in the cities and towns of the Commonwealth.

By Mr. Knuuttila of Gardner, petition (subject to Joint Rule 12) of Brian Knuuttila and Robert A. Antonioni for legislation to implement payment of a minimum wage for persons employed in stores offering the sale of alcoholic beverages.

By the same member, petition (subject to Joint Rule 12) of Brian Knuuttila and others that the State Board of Retirement be authorized to grant certain creditable service to Kelly Kearns Aveni for the purpose of determining her superannuation retirement allowances.

By Mr. Sannicandro of Ashland, petition (subject to Joint Rule 12) of Cleon H. Turner and others for legislation to provide insurance coverage for magnetic resonance imaging for certain persons for the detection of breast cancer.

Severally, under Rule 24, to the committee on Rules.

#### *Papers from the Senate.*

The House Bill establishing minimum energy-efficiency standards for certain products (House, No. 4299, amended) came from the Senate passed to be engrossed, in concurrence, with an amendment striking out all after the enacting clause and inserting in place thereof the text contained in Senate document numbered 2249.

Under suspension of Rule 35, on motion of Mr. Fallon of Malden, the amendment (reported by the committee on Bills in the Third Reading to be correctly drawn) was considered forthwith; and it was adopted, in concurrence.

A petition of Michael W. Morrissey and A. Stephen Tobin for legislation to grant disability retirement benefits to Eileen Crehan, came from the Senate referred, under suspension of Joint Rule 12, to the committee on Public Service.

The House then concurred with the Senate in the suspension of said rule; and the petition (accompanied by bill, Senate, No. 2254) was referred, in concurrence, to the committee on Public Service.

#### *Reports of Committees.*

Mr. Binienda of Worcester, for the committee of conference on the disagreeing votes of the two branches, with reference to the Senate amendment of the House Bill providing incentives to the motion picture industry (House, No. 4525, amended), recommending that the House recede from its non-concurrence with the Senate in its amendment and concur therein with a further amendment by striking out all after the enacting clause and inserting in place thereof the text contained in House document numbered 4455; and that the Senate concur therein.

Placed in the Orders of the Day for the next sitting, the question being on acceptance.

By Mr. Scaccia of Boston, for the committee on Rules and the committees on Rules of the two branches, acting concurrently, that Joint Rule 12 be suspended on the petition of Paul J. Donato relative to creditable service for certain town elected officials. Under suspension of the rules, on motion of Mr. Donato of Medford, the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Public Service. Sent to the Senate for concurrence.

Creditable  
service.

By Mr. Bosley of North Adams, for the committee on Economic Development and Emerging Technologies, asking to be discharged from further consideration

Of the petition (accompanied by bill, House, No. 3679) of Arlene Bushey for legislation to require that sales receipts contain the name of the business issuing said receipt,— and recommending that the same be referred to the committee on Community Development and Small Business;

Sales  
receipts.

Of the petition (accompanied by bill, House, No. 3714) of A. Stephen Tobin for legislation to include dental hygienists in the definition of “professional service” under the law regulating the establishment of professional corporations; and

Professional  
corporations.

Of the petition (accompanied by bill, House, No. 3729) of Bradley H. Jones, Jr., and others relative to the protection of employers from frivolous litigation;

Employers,  
protection  
from  
litigation.

And recommending that the same severally be referred to the committee on Consumer Protection and Professional Licensure;

Of the petition (accompanied by bill, House, No. 1481) of Jeffrey Davis Perry and Shirley Gomes for legislation to establish a pilot program to grant provisional permits, not in excess of five, for the use of innovative technology to construct shore line erosion control devices;

Innovative  
technology.

Of the petition (accompanied by bill, House, No. 3718) of Charles A. Murphy and David Paul Linsky relative to the pricing, sale and distribution of milk; and

Milk  
control  
law.

Of the petition (accompanied by bill, House, No. 3721) of William Francis Galvin and Angelo M. Scaccia for legislation to further regulate the price of milk;

Milk  
prices.

And recommending that the same severally be referred to the committee on Environment, Natural Resources and Agriculture;

Of the petition (accompanied by bill, Senate, No. 258) of Harriette L. Chandler, Jay R. Kaufman, Cynthia Stone Creem, Jarrett T. Barrios and other members of the General Court for legislation relative to genetic testing results; and

Genetic  
testing.

Of the petition (accompanied by bill, Senate, No. 277) of Richard T. Moore, Bruce E. Tarr and Edward G. Connolly for legislation to provide coverage for the use of new technologies;

Health care  
advances,  
coverage.

And recommending that the same severally be referred to the committee on Financial Services;

Of the petition (accompanied by bill, Senate, No. 279) of Richard T. Moore for legislation to require Medicaid reimbursement payments to health care provider electronic consultations;

Medicaid,  
electronic  
consultations.

Electronic  
hospital  
records,  
incentive.

Health  
care,  
administrative  
practices.

Handicapped  
corporate  
officers,  
liability.

Agency  
service  
fees.

Social  
security  
benefits,  
formula.

Boston,  
land  
lease

Women,  
child  
commitment.

Of the petition (accompanied by bill, Senate, No. 280) of Richard T. Moore for legislation to require medical assistance incentive payments to hospitals, clinics and doctor's offices that utilize a computerized order entry record system; and

Of the petition (accompanied by bill, House, No. 1489) of Frank M. Hynes for legislation to reduce administrative burdens in the delivery of health care through the use of new technology;

And recommending that the same severally be referred to the committee on Health Care Financing;

Of the petition (accompanied by bill, Senate, No. 266) of Lawrence P. Aherne, Jr. for legislation to limit personal liability for handicapped corporate officers,— and recommending that the same be referred to the committee on the Judiciary;

Of the petition (accompanied by bill, House, No. 3822) of Paul Kujawski relative to the payment of an agency service fee by certain employers under the public employee labor relations law,— and recommending that the same be referred to the committee on Labor and Workforce Development; and

Of the petition (accompanied by resolutions, House, No. 3833) of Thomas P. Kennedy and Alice Hanlon Peisch for adoption of resolutions by the General Court memorializing the Congress of the United States to enact legislation eliminating the inequities created by the "Notch Act",— and recommending that the same be referred to the committee on Veterans and Federal Affairs.

Under Rule 42, the reports severally were considered forthwith; and they were accepted. Severally sent to the Senate for concurrence.

By Mr. DeLeo of Winthrop, for the committee on Ways and Means, that the Bill authorizing the Division of Capital Asset Management to lease a certain parcel of land in the city of Boston (Senate, No. 2181) ought to pass. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Mr. Donato of Medford, for said committee, reported that the matter be scheduled for consideration by the House.

Under suspension of Rule 7A, on motion of Mr. Sullivan of Fall River, the bill was read a second time forthwith; and it was ordered to a third reading.

Subsequently, under suspension of the rules, on motion of Mr. Moran of Boston, the bill (having been reported by the committee on Bills in the Third Reading to be correctly drawn) was read a third time; and it was passed to be engrossed, in concurrence.

By Ms. Balser of Newton, for the committee on Mental Health and Substance Abuse, on a petition, a Bill relative to the civil commitment of women for alcoholism or substance abuse at a certain facility (House, No. 1614, changed in section 6, by striking out, in lines 4 and 5 the words "no less than fifteen" and inserting in place thereof the words "the necessary number of"; and adding at the end thereof the following section:

"SECTION 7. Said Section 35 of said Chapter 123 of the General Laws, as so appearing, is hereby further amended by adding the following paragraph:—

The department of public health shall file an annual report on these proceedings with the House Committee on Ways and Means, the Senate Committee on Ways and Means, The Joint Committee on Mental Health & Substance Abuse and the Joint Committee on Health Care Financing.").

By the same member, for the same committee, on a petition, a Bill to amend the Commonwealth's drug treatment program, to allow for the diversion of low-level offenders under court supervision (House, No. 3556, changed in section 1, by striking out the paragraph contained in lines 4 to 7, inclusive, and inserting in place thereof the following paragraph:

" 'Addiction specialist', a mental health professional licensed by the Commonwealth as prescribed by statute in the General Laws as a psychiatrist, clinical psychologist, LICSW or LCSW, LMHC, in addition to persons holding the following certifications from the Department of Public Health: Certified Alcoholism Counselor (C.A.C.), Certified Alcohol and Drug Abuse Counselor (C.A.D.A.C.), and Certified Addiction Specialist (C.A.S.); and by inserting after section 4 the following section:

"SECTION 4A. Said Chapter 111E of the General Laws is hereby amended by striking out the definition of 'First drug offense' in section 1, and inserting in place thereof the following:—

'First drug offense' that illegal act which stands pending for trial wherein the defendant is assigned to treatment under Chapter 111E regardless of the number of previous arrests for drug offenses. If the defendants previous criminal activity is violent, then this history may be taken into consideration when determining whether or not to be offered Chapter 111E.").

By Mr. Koutoujian of Waltham, for the committee on Public Health, on House, No. 1457, a Bill to promote proper school nutrition (House, No. 4452) [Representative Turner of Dennis dissenting].

Severally read; and referred, under Joint Rule 1E to the committee on Health Care Financing.

By Mr. Flynn of Bridgewater, for the committee on Bonding, Capital Expenditures and State Assets, on a message from His Excellency the Governor, a Bill relative to the terms of certain bonds to be issued by the Commonwealth (printed in House, No. 4385).

By Mr. Smizik of Brookline, for the committee on Environment, Natural Resources and Agriculture, on a petition, a Bill to regulate the establishment of rates for water and sewer services for low income residences of the Commonwealth (House, No. 1303).

By the same member, for the same committee, on a petition, a Bill to direct the Secretary of Environmental Affairs to implement a voluntary "green dot" recycled content labeling program. (House, No. 1387).

By the same member, for the same committee, on a petition, a Bill relative to the discharge of sewage from marine vessels into waters of the Commonwealth designated as no discharge areas (House, No. 4321, changed in section 2, by striking out, in lines 7 and 8, the sentence contained therein.).

Low-level  
drug  
offenders.

School  
nutrition.

Bonds,  
terms.

Low income,  
water and  
sewer rates.

Recycle  
labelling  
program.

Marine  
vessels,  
sewage  
discharge.

Rehabilitation  
counseling.

By Ms. Balser of Newton, for the committee on Mental Health and Substance Abuse, on a petition, a Bill improving access to rehabilitation counseling (House, No. 3125, changed in section 1, by inserting after the word "counselor", in line 10, the words "within the lawful scope of practice for such licensed rehabilitation counselor").

Severally read; and referred, under Rule 33, to the committee on Ways and Means.

Genetic  
testing  
results.

By Mrs. Walrath of Stow, for the committee on Health Care Financing, that the Bill relative to genetic testing results (House, No. 3899) ought to pass. Referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

Northern  
Berkshire,  
industrial  
development.

By Mr. Bosley of North Adams, for the committee on Economic Development and Emerging Technologies, on a petition, a Bill reconstituting the board of the Northern Berkshire Industrial Park and Development Corporation and authorizing the corporation to undertake residential and mixed use development (House, No. 4376).

M D C  
roadways.

By Mr. Smizik of Brookline, for the committee on Environment, Natural Resources and Agriculture, on a petition, a Bill relative to certain roadways of the Department of Conservation and Recreation formerly known as the Metropolitan District Commission (House, No. 3146).

Recycling.

By the same member, for the same committee, on a petition, a Bill to increase recycling (House, No. 3239).

Stoughton,  
M.W.R.A.  
fund.

By Ms. Kaprielian of Watertown, for the committee on Municipalities and Regional Government, on a petition, a Bill authorizing the town of Stoughton to establish a MWRA capital infrastructure fund (House, No. 4255, changed by inserting after the word "Fund", in line 19, the words "and the Massachusetts Water Resources Authority Capital Infrastructure Fund account will be extinguished"; and by adding at the end thereof the following two sections:

"SECTION 2. This act, upon passage, shall be retroactive to July 1, 2005."; and

"SECTION 3. This act shall take effect upon its passage.") [Local Approval Received].

Peter Jakob  
Jegorow,  
civil service.

By Mr. Kaufman of Lexington, for the committee on Public Service, on a petition, a Bill authorizing Peter Jakob Jegorow to take the civil service examination for the position of firefighter in the city of Haverhill notwithstanding the maximum age requirement (House, No. 295). [Local Approval Received.]

State police,  
collective  
bargaining.

By the same member, for the same committee, on a petition, a Bill relative to state police bargaining (House, No. 366).

Haverhill,  
Julio  
Perez.

By the same member, for the same committee, on a petition, a Bill authorizing Julio Perez to take the civil service examination for the position of firefighter in the city of Haverhill notwithstanding the maximum age requirement (House, No. 4119) [Local Approval Received].

Swampscott,  
fire  
department.

By the same member, for the same committee, on a petition, a Bill relative to reduction in rank for members of the fire department of the town of Swampscott (House, No. 4184) [Local Approval Received].

By the same member, for the same committee, on a petition, a Bill authorizing the town of Arlington to establish another postemployment benefits trust fund (House, No. 4272) [Local Approval Received].

Arlington,  
postemployment  
fund.

Severally read; and referred, under Rule 7A, to the committee on Steering, Policy and Scheduling.

### *Orders of the Day.*

#### House bills

Relative to the membership of the Conservation Commission of the town of Falmouth (House, No. 4098);

Relative to certain conservation land in the town of Falmouth (House, No. 4133);

Relative to the scenic roads in the town of Falmouth (House, No. 4135); and

Exempting the position of chief of police in the town of Salisbury from the civil service law (House, No. 4257);

Severally reported by the committee on Bills in the Third Reading to be correctly drawn, were read a third time; and they were passed to be engrossed. Severally sent to the Senate for concurrence.

Third  
reading  
bills.

#### Senate bills

Relative to the procurement officer of the city of Somerville (Senate, No. 2048); and

Further regulating voting hours in the town of Amherst (Senate, No. 2154); and

#### House bills

Establishing identification requirements for voters who register by mail (House, No. 92);

Relative to the leasing of real property to civic or social organizations by municipalities (House, No. 3438);

To adopt the model state trademark bill (House, No. 3500);

Relative to the membership of the Salem and Beverly Water Supply Board (House, No. 3595);

Authorizing the town of Topsfield to expand the board of selectmen, and to set the manner of election of the board of selectmen (House, No. 4224, changed); and

Relative to updating the mortality table for public employees (House, No. 4424);

Severally were read a second time; and they were ordered to a third reading.

Second  
reading  
bills.

The Senate Bill relative to the redetermination of municipal sewer assessments (Senate, No. 1203) was read a second time.

The amendment previously recommended by the committee on Municipalities and Regional Government,— that the bill be amended by substitution of a bill with the same title (House, No. 4435),— was adopted.

The substituted bill then was ordered to a third reading.

Second reading  
bill amended.

*Recess.*

Recess.

At seventeen minutes after eleven o'clock A.M., on motion of Mr. Smizik of Brookline, the House recessed until one o'clock P.M.; and at twenty-two minutes after one o'clock the House was called to order with the Speaker in the Chair.

*Motion to Discharge a Certain Matter in the Orders of the Day.*

Mr. Flynn of Bridgewater being in the Chair,—

Liquified  
natural gas,  
study.

Mr. Dempsey of Haverhill moved that the House Resolve providing for an investigation and study by a special commission relative to liquified natural gas siting and use in the Commonwealth (House, No. 4449), be discharged from its position in the Orders of the Day and considered forthwith, under suspension of Rule 47; and the motion prevailed.

The resolve then was read a second time.

Pending the question on ordering the resolve to a third reading, Mr. Bradley of Hingham moved that it be amended at the end of the second paragraph the following sentence: "The commission shall consider what restrictions, if any, would be implemented by the Federal Aviation Administration for any proposal within close proximity to Logan Airport."

After debate the amendment was adopted.

The same member then moved that the resolve be amended by adding at the end of the first paragraph the following sentence: "The special commission shall review the effects of any land takings and transfers that may be proposed with citing a Liquid Natural Gas facility."; and the amendment was adopted.

Mr. Bradley then moved that the resolve be amended in the second paragraph, in the second sentence, by striking out the words "economic and" and inserting in place thereof the words "economic, safety and"; and the amendment was adopted.

Mr. Dempsey of Haverhill then moved that the resolve be amended in the first paragraph, in the first sentence, by striking out the following: "2 members of the senate, 1 to appointed by the president and 1 to be appointed by the minority leader, 2 members of the house of representatives, 1 to be appointed by the speaker and 1 to be appointed by the minority leader" and inserting in place thereof the following: "the co-chairs of the joint committee on environment, natural resources and agriculture, 3 members of the senate, 2 to appointed by the president and 1 to be appointed by the minority leader, 3 members of the house of representatives, 2 to be appointed by the speaker and 1 to be appointed by the minority leader". The amendment was adopted.

On the question on ordering the resolve, as amended to a third reading, the sense of the House was taken by yeas and nays, at the request of Mr. Dempsey of Haverhill; and on the roll call 140 members voted in the affirmative and 0 in the negative.

**[See Yea and Nay No. 243 in Supplement.]**

Therefore the resolve, as amended, was ordered to a third reading.

Resolve  
ordered to  
a third  
reading,  
yea and nay  
No. 243.

Subsequently, under suspension of the rules, on further motion of Mr. Dempsey, the resolve (having been reported by the committee on Bills in the Third Reading to be correctly drawn) was read a third time; and it was passed to be engrossed. The resolve (House, No. 4449, amended) then was sent to the Senate for concurrence.

*Recess.*

At two o'clock P.M., on motion of Mr. Petrolati of Ludlow (Mr. Flynn of Bridgewater being in the Chair), the House recessed until three o'clock; and at twenty-five minutes before four o'clock the House was called to order with Mr. Petrolati in the Chair.

Recess.

*Messages from the Governor — Bills Returned with Recommendation of Amendments.*

A message from His Excellency the Governor returning with recommendation of amendments the engrossed Bill increasing penalties for drunk drivers in the Commonwealth [see House, No. 4403, amended] (for message, see House, No. 4453) was filed in the office of the Clerk on Wednesday, October 26.

Drunk  
drivers,  
penalties.

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was thereupon "before the General Court and subject to amendment and re-enactment".

Pending the question on adoption of the amendments recommended by His Excellency, the bill was referred, on motion of Mr. Golden of Lowell, to the committee on Bills in the Third Reading.

Subsequently said committee reported recommending that said amendments be considered in the following form:

By inserting after section 6 (as engrossed) the following section:

"SECTION 6A. Said paragraph (c) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby further amended by striking out subparagraph (4) and inserting in place thereof the following subparagraph:—

(4) In any prosecution commenced pursuant to this section, introduction into evidence of a prior conviction or a prior finding of sufficient facts by either certified attested copies of original court papers, or certified attested copies of the defendant's biographical and informational data from records of the department of probation, any jail or house of corrections, the department of correction, or the registry, shall be prima facie evidence that the defendant before the court had been convicted previously or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction. Such documentation shall be self-authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense, as evidence in any court of the commonwealth to prove the defendant's commission of any prior convictions described therein. The commonwealth shall not be required to introduce any additional corroborating evidence, nor live witness testimony to establish the validity of such prior convictions."

Drunk  
drivers,  
penalties.

By striking out section 9 and inserting in place thereof the following section:

“SECTION 9. Paragraph (f) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby amended by striking out subparagraph (1) and inserting in place thereof the following paragraph:—

(1) Whoever operates a motor vehicle upon any way or in any place to which the public has right to access, or upon any way or in any place to which the public has access as invitees or licensees, shall be deemed to have consented to submit to a chemical test or analysis of his breath or blood in the event that he is arrested for operating a motor vehicle while under the influence of intoxicating liquor; provided, however, that no such person shall be deemed to have consented to a blood test unless such person has been brought for treatment to a medical facility licensed under the provisions of section 50 of chapter 111; and provided, further, that no person who is afflicted with hemophilia, diabetes or any other condition requiring the use of anticoagulants shall be deemed to have consented to a withdrawal of blood. Any such test shall be administered at the direction of a police officer, as defined in section I of chapter 90C, having reasonable grounds to believe that the person arrested has been operating a motor vehicle upon such way or place while under the influence of an intoxicating substance. If the person arrested refuses to submit to such test or analysis, after having been informed that his license or permit to operate motor vehicles or right to operate motor vehicles in the commonwealth shall be suspended for at least a period of 180 days and up to a lifetime loss of license, no such test or analysis shall be made and he shall immediately have his license or right to operate suspended in accordance with the provisions of this paragraph for a period of 180 days; provided, however, that any person who is under the age of 21 or who has previously been convicted of a violation under this section, subsection (a) of section 24G, subsection (b) of said section 24G if the ingestion of intoxicating liquor or operating under the influence thereof was a proven element of such offense, section 24L or subsection (a) of section 8 of chapter 90B, or section 8A or 8B of said chapter 90B, or a like violation by a court of any other jurisdiction, or who has previously refused a chemical test or analysis of his breath or blood shall have his license suspended for a period of 1 year for such refusal; provided, further, that any person previously so convicted 2 or more times or who has previously refused a chemical test or analysis of his breath or blood two times shall have his license suspended forthwith for a period of 5 years for such refusal; and provided, further, that any person previously so convicted 3 or more times or who has previously refused a chemical test or analysis of his breath or three times shall have his license suspended forthwith for life based upon such refusal. If any person refuses to submit to any such test or analysis after committing an offense that results in the bodily injury to another as defined in section 24L, then the person shall have their license or right to operate suspended for a period of 10 years. If any person refuses to submit to any such test

or analysis after committing an offense that results in the death of another, then the registrar shall revoke the person's license or right to operate for life. If a person refuses to take a test under this paragraph, the police officer shall do the following:

(i) immediately, on behalf of the registrar, take custody of such person's license or right to operate issued by the commonwealth;

(ii) provide to each person who refuses such test, on behalf of the registrar, a written notification of suspension in a format approved by the registrar; and

(iii) impound the vehicle being driven by the operator and arrange for the vehicle to be impounded for a period of 12 hours after the operator's refusal, with the costs for the towing, storage and maintenance of the vehicle to be borne by the operator.

The police officer before whom such refusal was made shall, within 24 hours, prepare a report of such refusal. Each report shall be made in a format approved by the registrar and shall be made under the penalties of perjury by the police officer before whom such refusal was made. Each report shall set forth the grounds for the officer's belief that the person arrested had been operating a motor vehicle on a way or place while under the influence of intoxicating liquor, and shall state that such person had refused to submit to a chemical test or analysis when requested by the officer to do so, such refusal having been witnessed by another person other than the defendant. Each report shall identify the police officer who requested the chemical test or analysis and the other person witnessing the refusal. Each report shall be sent forthwith to the registrar along with a copy of the notice of intent to suspend in a form, including electronic or otherwise, that the registrar deems appropriate. A license or right to operate which has been confiscated pursuant to this subparagraph shall be forwarded to the registrar forthwith. The report shall constitute prima facie evidence of the facts set forth therein at any administrative hearing regarding the suspension specified in this section.

The suspension of a license or right to operate shall become effective immediately upon receipt of the notification of suspension from the police officer. A suspension for a refusal of either a chemical test or analysis of breath or blood shall run consecutively and not concurrently, both as to any additional suspension periods arising from the same incident, and as to each other.

No license shall be restored under any circumstances, including a dismissal or acquittal on the criminal charges, and no restricted or hardship permits shall be issued during the suspension period imposed by this paragraph to any person who is under the age of 21 or who has previously been convicted of a violation under this section, subsection (a) of section 24G, subsection (b) of said section 24G if the ingestion of intoxicating liquor or operating under the influence thereof was a proven element of such offense, section 24L or subsection (a) of section 8 of chapter 90B, or section 8A or 8B of said chapter 90B, or a like violation by a court of any other jurisdiction, or who has previously refused a chemical test or analysis of his breath or blood; provided, however, that if the defendant is not

Drunk  
drivers,  
penalties.

under the age of 21, has not been previously convicted as provided in this paragraph, and has not previously refused a chemical test or analysis of his breath or blood, the defendant may immediately, upon entry of a not guilty finding or dismissal of all criminal charges under this section, section 24G or 24L, and in the absence of any other alcohol related charges pending against said defendant, apply for an be immediately granted a hearing before the court which took final action on the charges for the purpose of requesting restoration of said license. At said hearing, there shall be a rebuttable presumption that said license be restored, unless the commonwealth shall establish, by a fair preponderance of the evidence, that restoration of said license would likely endanger the public safety. In all such instances, the court shall issue written findings of fact with its decision.”; and

In section 20 (as engrossed) by striking out the second sentence and inserting in place thereof the following sentence: “The sentence of imprisonment imposed upon such person shall not be reduced to less than 5 years, nor suspended, nor shall any such person be eligible for probation, parole or furlough or receive a deduction from his sentence for good conduct until he shall have served 5 years of such sentence.”.

The report was accepted.

At the request of Mr. Tobin of Quincy, the amendments were divided.

The first pending amendment, inserting section 6A, then was considered.

After remarks on the question on adoption of the first pending amendment, the sense of the House was taken by yeas and nays, at the request of Mr. Bradley of Hingham; and on the roll call 138 members voted in the affirmative and 2 in the negative.

**[See Ye and Nay No. 244 in Supplement.]**

Therefore the first pending amendment recommended by the Governor was adopted.

There being no objection, the third pending amendment, in section 20 (as engrossed) was considered.

On the question on adoption of the third pending amendment, the sense of the House was taken by yeas and nays, at the request of Mr. Peterson of Grafton; and on the roll call 138 members voted in the affirmative and 2 in the negative.

**[See Ye and Nay No. 245 in Supplement.]**

Therefore the third pending amendment recommended by the Governor was adopted.

The second pending amendment, striking out section 9 (as engrossed) and inserting in place thereof a new section 9, then was considered.

Pending the question on adoption of the third pending amendment recommended by the Governor, Mr. Golden of Lowell moved that it be amended by striking out the text of the proposed section 9 and inserting in place thereof the following:

“SECTION 9. Paragraph (f) of said subdivision (1) of said section 24 of said chapter 90, as so appearing, is hereby amended by

First  
pending  
amendment  
adopted,  
yea and nay  
No. 244.

Third  
pending  
amendment  
adopted,  
yea and nay  
No. 245.

striking out subparagraph (1) and inserting in place thereof the following subparagraph:—

(1) Whoever operates a motor vehicle upon any way or in any place to which the public has right to access, or upon any way or in any place to which the public has access as invitees or licensees, shall be deemed to have consented to submit to a chemical test or analysis of his breath or blood in the event that he is arrested for operating a motor vehicle while under the influence of intoxicating liquor; provided, however, that no such person shall be deemed to have consented to a blood test unless such person has been brought for treatment to a medical facility licensed under the provisions of section 51 of chapter 111; and provided, further, that no person who is afflicted with hemophilia, diabetes or any other condition requiring the use of anticoagulants shall be deemed to have consented to a withdrawal of blood. Such test shall be administered at the direction of a police officer, as defined in section I of chapter 90C, having reasonable grounds to believe that the person arrested has been operating a motor vehicle upon such way or place while under the influence of intoxicating liquor. If the person arrested refuses to submit to such test or analysis, after having been informed that his license or permit to operate motor vehicles or right to operate motor vehicles in the commonwealth shall be suspended for a period of at least 180 days and up to a lifetime loss, for such refusal, no such test or analysis shall be made and he shall have his license or right to operate suspended in accordance with this paragraph for a period of 180 days; provided, however, that any person who is under the age of 21 years or who has previously been convicted of a violation under this section, subsection (a) of section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while under the influence of intoxicating liquor in violation of subsection (b) of said section 24G, section 24L or subsection (a) of section 8 of chapter 90B, section 8A or 8B of said chapter 90B, or section 13 1/2 of chapter 265 or a like violation by a court of any other jurisdiction shall have his license or right to operate suspended forthwith for a period of 3 years for such refusal; provided, further, that any person previously convicted of 2 such violations shall have his license shall have his license or right to operate suspended forthwith for a period of 5 years for such refusal; and provided, further, that a person previously convicted of 3 or more such violations shall have his license suspended forthwith for life based upon such refusal. If a person refuses to submit to any such test or analysis after having been convicted of a violation of section 24L, the registrar shall suspend his license or right to operate for 10 years. If a person refuses to submit to any such test or analysis after having been convicted of a violation of subsection (a) of section 24G, operating a motor vehicle with a percentage by weight of blood alcohol of eight one-hundredths or greater, or while under the influence of intoxicating liquor in violation of subsection (b) of said section 24G, of section 13 1/2 of chapter 265, the registrar shall revoke his license or right to operated for life. If a person refuses to take a test under this paragraph, the police officer shall:



Drunk  
drivers,  
penalties.

(i) immediately, on behalf of the registrar, take custody of such person's license or right to operate issued by the commonwealth;

(ii) provide to each person who refuses such test, on behalf of the registrar, a written notification of suspension in a format approved by the registrar; and

(iii) impound the vehicle being driven by the operator and arrange for the vehicle to be impounded for a period of 12 hours after the operator's refusal, with the costs for the towing, storage and maintenance of the vehicle to be borne by the operator.

The police officer before whom such refusal was made shall, within 24 hours, prepare a report of such refusal. Each report shall be made in a format approved by the registrar and shall be made under the penalties of perjury by the police officer before whom such refusal was made. Each report shall set forth the grounds for the officer's belief that the person arrested had been operating a motor vehicle on a way or place while under the influence of intoxicating liquor, and shall state that such person had refused to submit to a chemical test or analysis when requested by the officer to do so, such refusal having been witnessed by another person other than the defendant. Each report shall identify the police officer who requested the chemical test or analysis and the other person witnessing the refusal. Each report shall be sent forthwith to the registrar along with a copy of the notice of intent to suspend in a form, including electronic or otherwise, that the registrar deems appropriate. A license or right to operate which has been confiscated pursuant to this subparagraph shall be forwarded to the registrar forthwith. The report shall constitute prima facie evidence of the facts set forth therein at any administrative hearing regarding the suspension specified in this section.

The suspension of a license or right to operate shall become effective immediately upon receipt of the notification of suspension from the police officer. A suspension for a refusal of either a chemical test or analysis of breath or blood shall run consecutively and not concurrently, both as to any additional suspension periods arising from the same incident, and as to each other.

No license shall be restored under any circumstances and no restricted or hardship permits shall be issued during the suspension period imposed by this paragraph; provided, however, that the defendant may immediately, upon the entry of a not guilty finding or dismissal of all charges under this section, section 24G, section 24L, or section 13½ of chapter 265, and in the absence of any other alcohol related charges pending against said defendant, apply for and be immediately granted a hearing before the court which took final action on the charges for the purpose of requesting the restoration of said license. At said hearing, there shall be a rebuttable presumption that said license be restored, unless the commonwealth shall establish, by a fair preponderance of the evidence, that restoration of said license would likely endanger the public safety. In all such instances, the court shall issue written findings of fact with its decision."

On the question on adoption of the further amendment, the sense of the House was taken by yeas and nays, at the request of Mr. Jones

Further  
amendment

of North Reading; and on the roll call 92 members voted in the affirmative and 48 in the negative.

**[See Yea and Nay No. 246 in Supplement.]**

Therefore the further amendment was adopted, thus precluding a vote on the pending amendment.

The bill then was sent to the Senate for its action.

A message from His Excellency the Governor returning with recommendation of amendment the engrossed Bill authorizing the appointment of retired police officers in the town of Weymouth to serve as special officers [see House, No. 4344, amended] (for message, see House, No. 4454) was filed this day in the office of the Clerk.

The message was read; and, under the provisions of Article LVI of the Amendments to the Constitution, the bill was thereupon "before the General Court and subject to amendment and re-enactment".

Pending the question on adoption of the amendment recommended by His Excellency, the bill was referred, on motion of Mr. Murphy of Weymouth, to the committee on Bills in the Third Reading.

Subsequently said committee reported recommending that said amendment be considered in the following form:

In section 1, by striking out the first sentence and inserting in place thereof the following sentence: "The chief of police in the town of Weymouth, as the appointing authority, may appoint as he deems necessary, retired police officers as special police officers for the purpose of performing police details or any police duties arising therefrom or during the course of police detail work, whether or not related to the detail work."

The report was accepted.

The amendment then was adopted. Sent to the Senate for its action.

#### *Recesses.*

At a quarter after four o'clock P.M., on motion of Mr. Petrolati of Ludlow (Mr. Flynn of Bridgewater being in the Chair), the House recessed until five o'clock; and at that time the House was called to order with Mr. Golden of Lowell in the Chair.

The House thereupon took a further recess, on motion of Mr. Peterson of Grafton, until half past five o'clock; and at that time the House was called to order with Mr. Golden in the Chair.

#### *Petition.*

Mr. Scaccia of Boston presented a petition (subject to Joint Rule 12) of Frederick E. Berry and others relative to granting creditable service to J. Michael Ruane, a former member of the House of Representatives; and the same was referred, under Rule 24, to the committee on Rules.

Mr. Scaccia, for the committee on Rules and the committees on Rules of the two branches, acting concurrently, then reported recommending that Joint Rule 12 be suspended. Under suspension of the rules, on motion of Mr. Donato of Medford, the report was considered forthwith. Joint Rule 12 was suspended; and the petition (accompanied by bill) was referred to the committee on Public Service. Sent to the Senate for concurrence.

adopted,  
yea and nay  
No. 246.

Weymouth,  
special  
police.

Recesses.

J. Michael  
Ruane,  
retirement.

*Recesses.*

Recesses.

At twenty minutes before six o'clock P.M., the Chair (Mr. Golden of Lowell) declared a recess until five minutes after six o'clock; and at that time the House was called to order with Mr. Golden in the Chair.

The House thereupon took a further recess, on motion of Mr. Peterson of Grafton, until a quarter before seven o'clock; and at that time the House was called to order with Mr. Petrolati of Ludlow in the Chair.

*Emergency Measure.*Drunk  
drivers,  
penalties.

The engrossed Bill increasing penalties for drunk drivers in the Commonwealth (see House, No. 4403, amended), having been certified by the Clerk to be rightly and truly prepared for final passage, was considered, the question being on adopting the emergency preamble.

A separate vote was taken, as required by the provisions of Article XLVIII (as amended by Article LXVII) of the Amendments to the Constitution; and the preamble was adopted, by a vote of 42 to 0. Sent to the Senate for concurrence.

Subsequently, the Senate having concurred in adoption of the emergency preamble, the bill (which originated in the House) (which had been returned by His Excellency the Governor with recommendation of amendment) was put upon its final passage.

Bill  
re-enacted,  
yea and nay  
No. 247.

On the question on passing the bill to be re-enacted, in its amended form, the sense of the House was taken by yeas and nays, at the request of Mr. Jones of North Reading; and on the roll call 137 members voted in the affirmative and 2 in the negative.

**[See Yea and Nay No. 247 in Supplement.]**

Therefore the bill was passed to be re-enacted, in its amended form; and it was signed by the acting Speaker and sent to the Senate.

*Order.*

On motion of Mr. DiMasi of Boston,—

Next  
sitting.

*Ordered*, That when the House adjourns today, it adjourn to meet on Monday next at eleven o'clock A.M.

*In Memory of Charles F. Engdahl.*

Mr. Binienda of Worcester then moved that as a mark of respect to the memory of Charles F. Engdahl, a member of the House from Worcester from 1969 to 1979, inclusive, the House adjourn; and the motion prevailed.

Accordingly, without further consideration of the remaining matters in the Orders of the Day, at eight minutes after seven o'clock P.M. on motion of Ms. Gobi of Spencer (Mr. Petrolati of Ludlow being in the Chair), the House adjourned, to meet on Monday next at eleven o'clock A.M.